

EUGENE H. AND ALLIEENE A. JANKOSKI

IBLA 79-280

Decided October 29, 1979

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease N-7160.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the payment.

3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Bureau of Land Management's cashing a late rental check and depositing it in its unearned account does not constitute acceptance of rental payment or a determination

that a terminated oil and gas lease will be reinstated.

APPEARANCES: Eugene H. Jankoski, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Eugene H. and Allieene A. Jankoski appeal from the February 9, 1979, decision of the Nevada State Office, Bureau of Land Management (BLM), denying their petition for reinstatement of oil and gas lease N-7160. Appellants' lease terminated by operation of law for failure to pay the annual rental on or before December 1, 1978.

Appellants' rental check was received by the State Office December 5, 1978. The envelope was postmarked December 3, 1978. On December 6, 1978, BLM sent appellants an Oil and Gas Lease Termination Notice. The petition for reinstatement was received on December 26, 1978. Jankoski stated that the reason payment was late was because he mislaid the notice that payment was due and did not find it until the end of November. Appellant states he does not "know how it wasn't postmarked at least on the 1st of Dec. unless it was hung up in the postal box somehow."

BLM denied reinstatement because the petition did not set forth adequate justification for failure to remit the rental on time nor sufficiently strong evidence to show the failure was not due to a lack of reasonable diligence.

In the statement of reasons for appeal, appellant states that BLM received and cashed his check. "In any business this usually means the deal is closed \* \* \*." He also states that he has never been late before in the "14 or so years he has held this lease." The lease issued effective December 1, 1972, so he actually held the lease for 6 rather than 14 years.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law, except under limited circumstances not applicable here. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1976).

[2] In order for the failure to pay rental timely to be justifiable, the failure must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Emma Pace, 35 IBLA 143 (1978); Richard C. Corbyn, 32 IBLA 296 (1977); Adolph F. Muratori, 31 IBLA 39 (1977); Louis Samuel, 8 IBLA 268 (1972). Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the

collection, transmittal, and delivery of the payment. 43 CFR 3108.2-2(c)(2).

Payment was due at the BLM State Office on December 1, 1978. Appellant's check was not postmarked until December 3, 1978. Appellant has offered no evidence tending to show that he mailed the check in advance of the due date in sufficient time to reach BLM in the ordinary course of the mails. Therefore, he has not shown that he exercised reasonable diligence. See Albert R. Fairfield, 34 IBLA 133 (1978); Agnes M. French, 28 IBLA 282 (1976); Dolores M. Heggie, 28 IBLA 222 (1976).

Under 43 CFR 3108.2-1(c)(2), the burden of showing that the failure to pay the rental when due was justifiable is on the lessee. Appellant has failed to meet this burden. No reason has been given for the failure to submit the rental timely except that the courtesy notice of rental due sent by BLM was mislaid. Even if BLM had not sent the courtesy notice, appellant nevertheless would still have the responsibility of paying rental timely. Kenneth F. Santor, 13 IBLA 208 (1973). Furthermore, carelessness or inadvertence do not justify late payment. Apostolos Paliombeis, 30 IBLA 153 (1977); Phillips Petroleum Co., 29 IBLA 114 (1977); Lula Mai Martin, 27 IBLA 360 (1976); Frank H. Crosby, 25 IBLA 60 (1976).

[3] Appellant suggests that the acceptance of his rental check is sufficient to bind the Department to reinstate his lease. The cashing of the check and depositing it in the unearned account does not constitute an acceptance of the payment nor a determination that a lease will be reinstated. A refund will be made in due course. See Richard P. Smoot, 39 IBLA 1 (1979); Nevada Western Oil Co., 30 IBLA 379 (1977); Robert Williams, 24 IBLA 311 (1976); Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976); John J. Nordhoff, 24 IBLA 73 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Frederick Fishman  
Administrative Judge

